

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,

Plaintiff,

v.

ROXANNE COLEMAN,

Defendant.

Case No.: 1:20-cv-00759-ADA-SKO (PC)

**ORDER SETTING PRETRIAL
CONFERENCE AND JURY TRIAL AND
ASSOCIATED DEADLINES**

**Pretrial Conference: 6/26//23 at 1:30 p.m. via
Zoom Video Conference**

**Jury Trial: 8/29/23 at 8:30 a.m. in
Courtroom 1**

Plaintiff Devonte B. Harris is proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

Discovery is closed and no party filed a pretrial dispositive motion. A settlement conference was held February 14, 2023. The case did not settle, and this action proceeds on a single claim of retaliation in violation of the First Amendment against Defendant R. Coleman. The Court now sets the following dates and deadlines.

I. PRETRIAL CONFERENCE & PROCEDURES

A pretrial conference is set for **June 26, 2023, at 1:30 p.m.**, in Courtroom 1, before District Judge Ana de Alba. The pretrial conference will be held via Zoom video conferencing. Defense counsel shall arrange for Plaintiff's participation and shall contact Courtroom Deputy

1 Mamie Hernandez (mhernandez@caed.uscourts.gov) for the connection information. The Court
2 will issue a writ of habeas corpus ad testificandum to allow for Plaintiff's participation, as
3 appropriate.

4 The parties shall file a separate pretrial statement in compliance with Local Rule 281.
5 Plaintiff shall file his pretrial statement on or before **June 12, 2023**. Defendant shall file her
6 pretrial statement on or before **June 19, 2023**; a copy of Defendant's pretrial statement shall also
7 be emailed in Word format to ADAorders@caed.uscourts.gov.

8 The parties are advised that failure to file a pretrial statement as required by this order
9 may result in the imposition of appropriate sanctions, which may include dismissal of the action
10 or entry of default.

11 In addition to the matters already required to be addressed in the pretrial statement in
12 accordance with Local Rule 281, Plaintiff will be required to make a particularized showing in
13 order to obtain the attendance of witnesses. The procedures and requirements for making such a
14 showing are outlined in detail below. Plaintiff is advised that failure to comply with the
15 procedures set forth below may result in the preclusion of any or all witnesses named in
16 Plaintiff's pretrial statement.

17 At the trial of this case, Plaintiff must be prepared to introduce evidence to prove each of
18 the alleged facts that support the claims raised in the lawsuit. In general, there are two kinds of
19 trial evidence: (1) exhibits and (2) the testimony of witnesses. It is Plaintiff's responsibility to
20 produce all of the evidence to prove Plaintiff's case, whether that evidence is in the form of
21 exhibits or witness testimony. If Plaintiff wants to call witnesses to testify, Plaintiff must follow
22 certain procedures to ensure that the witnesses will be at the trial and available to testify.

23 1. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to
24 Testify Voluntarily - An incarcerated witness who agrees voluntarily to attend trial to give
25 testimony cannot come to court unless this Court orders the warden or other custodian to permit
26 the witness to be transported to court. This Court will not issue such an order unless it is satisfied
27 that: (a) the prospective witness is willing to attend; and (b) the prospective witness has actual
28 knowledge of relevant facts.

1 A party intending to introduce the testimony of incarcerated witnesses who have agreed to
2 voluntarily attend the trial must serve and file a written motion for a court order requiring that
3 such witnesses be brought to court at the time of trial. The motion must: (1) state the name,
4 address, and prison identification number of each such witness; and (2) be accompanied by
5 declarations showing that each witness is willing to testify and that each witness has actual
6 knowledge of relevant facts. The motion should be entitled “Motion for Attendance of
7 Incarcerated Witnesses.”

8 The willingness of the prospective witness can be shown in one of two ways: (1) the party
9 him or herself can swear by declaration under penalty of perjury that the prospective witness has
10 informed the party that he or she is willing to testify voluntarily without being subpoenaed, in
11 which declaration the party must state when and where the prospective witness informed the party
12 of this willingness; or (2) the party can serve and file a declaration, signed under penalty of
13 perjury by the prospective witness, in which the witness states that he or she is willing to testify
14 without being subpoenaed.

15 The prospective witness’s actual knowledge of relevant facts can be shown in one of two
16 ways: (1) if the party has actual firsthand knowledge that the prospective witness was an
17 eyewitness or an ear-witness to the relevant facts, the party can swear by declaration under
18 penalty of perjury that the prospective witness has actual knowledge (*e.g.*, if an incident occurred
19 in Plaintiff’s cell and, at the time, Plaintiff saw that a cellmate was present and observed the
20 incident, Plaintiff may swear to the cellmate’s ability to testify); or (2) the party can serve and file
21 a declaration signed under penalty of perjury by the prospective witness in which the witness
22 describes the relevant facts to which the prospective witness was an eye or ear witness. Whether
23 the declaration is made by the party or by the prospective witness, it must be specific about the
24 incident, when and where it occurred, who was present, and how the prospective witness
25 happened to be in a position to see or to hear what occurred at the time it occurred.

26 2. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to
27 Testify Voluntarily - If a party seeks to obtain the attendance of incarcerated witnesses who
28 refuse to testify voluntarily, the party should serve and file a written motion for a court order

1 requiring that such witnesses be brought to court at the time of trial. Such motion should be in
2 the form described above. In addition, the party must indicate in the motion that the incarcerated
3 witnesses are not willing to testify voluntarily.

4 The Court will review and rule on the motion(s) for attendance of incarcerated witnesses,
5 specifying which prospective witnesses must be brought to court. Subsequently, the Court will
6 issue the writs necessary to cause the witnesses' custodian(s) to bring the witnesses to court.

7 **Motion(s) for the attendance of incarcerated witnesses, if any, must be filed on or**
8 **before April 28, 2023. Opposition(s), if any, must be filed on or before May 26, 2023.**

9 3. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to
10 Testify Voluntarily - It is the responsibility of the party who has secured an unincarcerated
11 witness's voluntary attendance to notify the witness of the time and date of trial. No action need
12 be sought or obtained from the Court.

13 4. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to
14 Testify Voluntarily - If a prospective witness is not incarcerated, and he or she refuses to testify
15 voluntarily, the witness must be served with a subpoena. Fed. R. Civ. P. 45. In addition, the
16 party seeking the witness's presence must tender an appropriate sum of money for the witness.
17 *Id.* In the case of an unincarcerated witness, the appropriate sum of money is the daily witness
18 fee of \$40.00 plus the witness's travel expenses. 28 U.S.C. § 1821.

19 If Plaintiff wishes to obtain the attendance of one or more unincarcerated witnesses who
20 refuse to testify voluntarily, Plaintiff must first notify the Court in writing of the name and
21 location of each unincarcerated witness. The Court will calculate the travel expense for each
22 unincarcerated witness and notify Plaintiff of the amount(s). Plaintiff must then, for each witness,
23 submit a money order made payable to the witness for the full amount of the witness's travel
24 expenses plus the daily witness fee of \$40.00. The subpoena will not be served upon the
25 unincarcerated witness by the United States Marshals Service unless the money order is tendered
26 to the Court. Because no statute authorizes the use of public funds for these expenses in civil
27 cases, the tendering of witness fees and travel expenses is required even if Plaintiff was granted
28 leave to proceed *in forma pauperis*.

1 If Plaintiff wishes to have the U.S. Marshals Service serve any unincarcerated witnesses
2 who refuse to testify voluntarily, Plaintiff must submit the money orders to the Court no later than
3 **May 26, 2023**. In order to ensure timely submission of the money orders, Plaintiff must notify
4 the Court of the names and locations of his or her witnesses, in compliance with the instructions
5 above, no later than **April 28, 2023**.

6 **II. TRIAL DATE**

7 The jury trial is scheduled to commence on **August 29, 2023, at 8:30 a.m., in Courtroom**
8 **1** before District Judge Ana de Alba.

9 **III. EFFECT OF THIS ORDER**

10 Any party unable to comply with the pretrial conference or trial dates outlined in this
11 order shall immediately file an appropriate motion or stipulation identifying the requested
12 modification(s).

13 *The dates for the pretrial conference and jury trial set in this order are considered to be*
14 *firm and will not be modified absent a showing of good cause, even if a stipulation to modify is*
15 *filed*. Due to the impacted nature of the civil case docket, this Court disfavors requests to modify
16 established dates.

17 **IV. CONCLUSION**

18 The Clerk of the Court is additionally directed to serve a copy of Local Rule 281 on
19 Plaintiff.

20 **All parties are advised that failure to comply with this order may result in the**
21 **imposition of sanctions.**

22
23 IT IS SO ORDERED.

24 Dated: **February 16, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE